

GOVERNOR'S STATE WORKFORCE INVESTMENT BOARD  
EXECUTIVE COMMITTEE CONFERENCE CALL  
Walt Sullivan Building, Helena  
December 1, 2004

**MINUTES**

**EXECUTIVE COMMITTEE MEMBERS PRESENT:** Haley Beaudry, Chair, Carol Brooker, Dick Brown, Jerry Driscoll, Diane Harkins, Lew Grill, Wendy Keating, Chuck Olson, Arlene Parisot, Gary Willis (This includes those present in the room and via conference call) Leroy Bingham joined the meeting late.

**STAFF:** Pam Watson

**GUESTS:** Norma Boetel, Bob Henry, Vicki Cocchiarella, Mary Berg, Brenda Hipp, Leslie Duffy, Marlys Rulon, Suzanne Payton, Gary Wright, Jay Reardon, Sue Mohr.

**Call to Order**

Chairman, Haley Beaudry, called the meeting to order at 2:00 PM.

**Welcome and Introductions**

Pam Watson conducted roll call. Chairman Beaudry welcomed everyone and announced that the meeting was being recorded. The tape will not be the official record of the meeting but will be an aide in transcribing the minutes. The minutes will be the official record.

He also advised that due to the nature of the items on the meeting agenda, there might be issues that cause a conflict of interest for some committee members. Chairman Beaudry asked that those who are direct recipients of funding, oversee programs, or serve on the local boards weigh issues carefully before voting. The Chair will call for abstentions prior to a call for a vote.

The second item on the agenda "Update SWIB Goals and Objectives" was deferred to the next meeting due to time constraints. The amended agenda was approved.

**Recommendation for Action to Governor Martz**

Chairman Beaudry advised the committee and those present that the State Workforce Investment Board is responsible for reviewing linkages between partners within the workforce system to ensure collaboration and continuous improvement of the system. The Board must ensure there are no consequences to the system participants or the system itself. The ultimate purpose of the entire system, the reason for its existence, is the clients – the people who use the system. Chairman Beaudry urged everyone to keep that in mind. At their November 19 meeting, the SWIB ad hoc Transition Committee felt that the current situation between the State Department of Labor and Industry, the local boards and their staff is significant enough to warrant close attention from Governor Martz.

Chairman Beaudry gave an overview of the Transition Committee meeting issues. The Transition Committee was established for two purposes. First to submit a SWIB transition report to the governor and governor-elect that lists the accomplishments and on-going projects and issues. The second purpose is to put a record into place so that the next Governor's State Workforce Investment Board won't have to reinvent the wheel and will be able to move forward. During the committee discussion of the items that should be included in the report, there were several items brought up that the Transition Committee felt

needed to be addressed by the Executive Committee as soon as possible, rather than waiting for the Transition Report.

Chairman Beaudry asked Wendy Keating, Commissioner of the Department of Labor and Industry (DLI) to comment. Commissioner Keating reported that one of the most critical issues brought before the Transition Committee was the lack of communication and cooperation between the local boards and their staff, and the state. She gave a historical accounting of the breakdown of communication. Commissioner Keating said the Montana Association of Counties (MACo) told her that they refuse to work with the current administration and communications were shut down.

Carol Brooker asked from whom that statement had come. Commissioner Keating stated that she met with Board of Directors of MJTP on October 20, 2004. At that meeting, Bill Kennedy stated that MACo's position was they were not going to work with Wendy Keating or the current administration. MACo would wait until a new commissioner and administration were on board.

The strained relationship between the local boards and staff and the Department of Labor has been an ongoing issue. Ms. Keating said her attempts to resolve the issues have not been responded to. Chairman Beaudry advised he had personally called the local board chairs and invited them to attend the November 19<sup>th</sup> Transition Committee meeting, but both were unavailable.

Ms. Keating added that this is not a debate about poor communication between the state and the local boards. Over the last eighteen months there has been disintegration in the level of trust. There have been several meetings over the course of the last year to try to address issues, clear the air, or better communicate what needs to be accomplished. Commissioner Keating said she feels that MACo's refusal to work with the state as a governing body of a grantee is unacceptable and inappropriate.

Wendy Keating advised that the USDOL offered to pay for a facilitator. In October she proposed the facilitated effort to the local boards and their staff, and hoped that everyone could sit down and work through the differences. The Executive Director of the local boards told Commissioner Keating that the issue was between the commissioners and the state, and if it was to be resolved, it had to be resolved with the County Commissioners.

When that wasn't working, Wendy Keating said she went to the MJTP Board of Directors and asked if all issues could be placed on the table and worked out with a facilitator. Until November 30, 2004, nothing was heard from the local boards. Ms. Keating received a copy of the local board's letter to Chairman Beaudry of November 29th saying that they would accept the facilitation offer.

Commissioner Keating talked to Governor Martz and expressed her concern. The Governor and the State Board have a responsibility to ensure that the system is working and that it has continuous improvement. Ms. Keating believes that the state has been remiss in not keeping the State Board involved. It started out to be individual miscommunications. The State Board was kept out of it because the Department of Labor wanted to drive the State Board to look at bigger issues and not interfere with the governance of the local boards. As things continued to get worse, there have been issues of misinformation and misinterpretation of the state's motives. The communication between Commissioner Keating and the local boards since October 20 is nonexistent. She stated she has been in contact with the USDOL regional office, and they are very concerned.

Commissioner Keating also reported that the USDOL Regional Office recently monitored the Statewide Workforce Programs and Oversight Bureau of DLI. The state had requested the monitoring because of

concerns that the local boards were feeling that the state's monitoring was heavy handed. The state wanted to be sure that its monitoring activities were appropriate. At the Transition Committee meeting, Commissioner Keating advised the committee of the basic message on the exit interview, and said DLI has not received the official monitoring report from the USDOL. The basic message was that the USDOL does not feel that the state has been monitoring the local boards nearly to the extent that they expect. The USDOL will provide specific recommendations of where they don't feel the state has been monitoring in sufficient depth or thoroughly enough. The federal government will come back and audit the local boards after the first of the year, probably February.

Communication has broken down to the point where it is very unhealthy for the system, for the participants, and it is starting to affect services at the local level. Commissioner Keating doesn't like leaving her job as Commissioner with this up in the air and having people not speaking to each other, and feels that everyone should be embarrassed by his or her behavior. Chairman Beaudry stated that was the purpose of the Executive Committee meeting today.

Chairman Beaudry asked Gordon Higgins, Job Service Programs Bureau Chief, DLI, to explain Personal Reemployment Accounts and how collaboration and cooperation are required by the USDOL in the PRA Demonstration Project.

Gordon Higgins explained the Personal Reemployment Accounts (PRA) at the meeting on November 19, and gave the Executive Committee an overview. Since the November 19th meeting, more information has become available. Montana has been given the opportunity to participate in a demonstration project, and the state was awarded \$550,000 to engage in a program that allows for unemployed claimants who are likely to exhaust their unemployment insurance benefits to participate in a self directed service delivery.

This is a new model of service delivery that is going to challenge how the current system works. Mr. Higgins recently met with Tom Hayes from Montana Job Training Partnership Inc. (MJTP) and with Concentrated Employment Program (CEP) local board consortium members to discuss the challenges ahead. The process to engage in this demonstration project requires that once the state's plan is approved by USDOL, the existing system will be used to pass money through from the state to the local boards. The local boards would then be required to run that program money through the One-Stops. Based on the meeting that Mr. Higgins had with Tom Hayes and the CEP consortium, the group is moving ahead with identifying responsibilities. Mr. Higgins said he is looking on this as an opportunity to repair some of the relationships with the providers. The bottom line is that this needs to work and Montana needs to take advantage of the opportunity.

Chairman Beaudry asked if there was any danger that the state may lose the ability to participate in this pilot project if this communications problem continues. Mr. Higgins responded that was a possibility. The program manager from the USDOL Employment and Training Administration and the regional office have both said that the local boards need to be engaged in spite of any ancillary issues that are ongoing related to the system. Mr. Higgins stated that if the state and the local boards don't work together, the plan could possibly not be approved.

Chairman Beaudry advised the Executive Committee that the communication and cooperation issue needs to be addressed with options for action provided to Governor Martz. He stated that this discussion item leads to the Committee hearing an overview of pending monitoring reports. The Chairman asked Gary Wright to give an overview of the two recent monitorings conducted by the Statewide Workforce Programs and Oversight Bureau. Gary Wright explained that it is important to understand that there are

two monitorings going on. One is the review of the Flathead Area and Columbia Falls Aluminum Company (CFAC) National Emergency Grant (NEG); the other is the monitoring that is done every year of the Balance of State (BOS) and the Concentrated Employment Program (CEP) local delivery service programs. The state has no discretion in conducting these monitorings; they are requirements of the law and requirements of the NEGs.

Gary Wright stated that some of the pending findings include issues of local board membership, open meeting law violations, and potential disallowed costs. He also explained that the monitoring is still currently underway, and the local boards have until December 6 and December 8 to respond to the findings and issues with a corrective action response. Chairman Beaudry explained that the issues were significant enough that the Transition Committee felt the Executive Committee should be aware of them, so the SWIB can keep track of monitoring outcomes.

Chairman Beaudry asked if there would be additional correspondence if the corrective action were only partially acceptable or inadequate, how long would the response take and what is the second response period. Mr. Wright responded that there were some issues that will be relatively simple to fix, and some have already been cleared up. Mr. Wright explained that it was premature to say what will happen next. Whether or not to accept the corrective action will depend on what the law says. If portions of the corrective action are not accepted by the state, the local board's appeal rights will be outlined in the state's response. Mr. Wright advised he was willing to make the commitment that the local board response would be answered by the state within 30 days of receipt.

Jerry Driscoll asked Gary Wright if he was familiar with the policy manual from the federal government, page 16, listing advance payment prohibitions and exceptions, which listed prepayment of tuition as an exception. Mr. Wright stated that he was familiar with the manual and asked that Leslie Duffy, Fiscal Officer for the Workforce Services Division address Mr. Driscoll's question. Ms. Duffy stated she attended training in July with Don Brewer from MJTP, Inc. At that training, they were told by the federal government that tuition was allowed to be paid as an advance payment but only if it was common practice of the institution that was being paid. For instance, Flathead Valley Community College's (FVCC) common practice is after enrollment has taken place and after the class has started, FVCC sends the third party, which would be Project Challenge, a bill. Since that is the college's common practice, that is the policy the federal government wants the state to follow.

Jerry Driscoll asked about the form used to reimburse expenditures for clients for the Flathead Area/CFAC NEG. Mr. Wright asked if that was the form that listed the family income, and Mr. Driscoll said that was the form he was referring to. Mr. Driscoll said that one of the monitoring findings stated that the forms didn't contain enough information or weren't accurate. Mr. Wright said that he didn't think it was appropriate to debate the findings at this time, but that the OMB Circular A110 requires source documentation, which means that the money is tracked back to where the service was provided. For example, if the program pays a utility bill, they are not allowed to take a participant's word that it cost \$150 a month for utilities. The program operator would need to see the bill from Northwestern Energy or the service provider, and payment should be made directly to the service provider. Self-declaration is not acceptable. Mr. Wright again expressed that he didn't feel that it was appropriate to debate this issue at this time since the monitoring process was still in progress.

Chairman Beaudry explained that the Transition Committee had requested the Executive Committee be advised of the issues, but issues that are still pending cannot be resolved until the response time has expired, since the responses might cover the issues. Gary Willis asked Mr. Wright if some of the issues

had, in fact, been resolved. Mr. Wright stated that he was aware that action had been taken on some of the issues, but that he doesn't have the corrective action response back yet.

Chairman Beaudry again discussed the USDOL monitoring of the State Department of Labor. The state is required by federal law to annually monitor the WIA Title 1B programs. The USDOL monitors the state's job of monitoring those programs. That USDOL report has not yet been issued, however there was an exit interview with the people that conducted the audit. One of the issues the state was advised will be in that report is that there is no contractual agreement for passing money down to the local boards. When the report is issued, the state will meet with the BOS and CEP representatives to develop a contract for passing those funds down. The USDOL also told the state there needs to be a policy manual in place. A policy manual is being developed and will be presented to the Executive Committee at its December 16 meeting.

Dick Brown asked if there were contracts in place at this time for those funds or if this is the first time that it had been mentioned. Mr. Wright responded that there is a contract in place with the Job Service, but there has not been a contract in place with the local boards. Mr. Brown asked if that would be an annual contract. Mr. Wright responded that each time new funds were available, a new agreement would be required. Mr. Wright said staff was in the process of studying contracts in other states. Using them as guides, the staff will develop one for Montana. Mr. Brown asked if the agreements to distribute funds to the local boards would be contingent upon all of the items in the monitoring report being corrected. Mr. Wright said that he has asked USDOL for clarification on that issue and doesn't have an answer yet.

Commissioner Keating explained that the state is responsible to the USDOL, which oversees and monitors the state. The local boards are responsible to the state and, therefore, the state monitors them. She asked who was liable when there are disallowed costs at the local board level. Mr. Wright said that the USDOL has advised him that if there were disallowed costs, responsibility would go back to where the payments were first made. If it is not paid back, the Governor could waive repayment. If the USDOL were to find that action unacceptable, it would ask the Governor for repayment. The question would end up in the legislature for appropriation of those funds. Mr. Wright emphasized that since there is not yet a final response to the monitoring report, he cannot be sure that there is a problem with disallowed costs.

Chairman Beaudry discussed the letter he received from the BOS and CEP chairs indicating that they would like to work with the state. The Governor needs to understand her options, and the governor-elect needs to understand his options, obligations, and responsibilities should these issues remain unresolved. Mr. Beaudry asked for committee discussion.

Commissioner Keating said that she would still prefer to proceed with a facilitated session. Lew Grill asked about the facilitator and what his qualifications were. Mr. Grill suggested "ADR", or Alternative Dispute Resolution, or resolution by a third party. Wendy Keating advised that Gordon Graham is a professional facilitator of public governing boards, and was suggested by the USDOL. Chuck Olson asked about payment of the facilitator. Commissioner Keating stated that the USDOL has offered to pay for the facilitator out of their technical assistance funds. Diane Harkins said the Executive Committee needs to request more than mediation. A report with recommendations and someone to review the report and the results of the mediation should be considered. Commissioner Keating said that there would be a report from the facilitator with recommendations. Carol Brooker asked how soon this could take place, to which Wendy Keating replied that she would contact the facilitator and set something up as soon as possible.

Carol Brooker asked if the same State Workforce Investment Board would be in place after the first of the year. Chairman Beaudry explained that the Governor appoints the members of the board, and that each board member would serve until the governor-elect appointed his own board. Ms. Brooker recommended that the group move forward with hiring the facilitator. Chairman Beaudry called for a motion. Gary Willis moved to proceed with hiring a facilitator, Dick Brown seconded the motion. Chairman Beaudry asked for further discussion. After discussion, the motion was amended to move to proceed with hiring Gordon Graham to facilitate. If Gordon Graham is not available, the group will contact Joe Juarez at the USDOL for names of other facilitators. Chairman Beaudry called for public comment. Hearing none, a vote was taken and the motion passed unanimously. Chairman Beaudry stated he and Wendy Keating would contact Gordon Graham following the Executive Committee meeting to start the process. The groups will work together to determine who will attend the facilitation session.

Commissioner Keating said that she felt the Governor should be apprised of the current issues and situation. Jerry Driscoll suggested that a letter be sent to the Governor stating that everyone agreed to the facilitation session. It was agreed that a letter would be sent to Governor Martz advising of the action taken by the Executive Committee.

Pam Watson explained the Transition Committee has a conference call meeting scheduled for Wednesday, December 9 to approve the Transition Report to Governor Martz and Governor-elect Schweitzer. Ms. Watson will send a list of items the Transition Committee identified that they would like to have in the report, and asked that if there were items the Executive Committee would like included in the report, to please submit them by December 6, 2004.

Chairman Beaudry called for any other comments from the Committee or the public. Hearing none, the meeting was adjourned.

### **Adjournment**

The meeting adjourned at 3:45 PM.

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Haley Beaudry, Chairman

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Date